

Message Text

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ACTION OPIC-12

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FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC 2311

UNCLAS BANGKOK 5798

E. O. 11652: N/A

TAGS ELAB, EFIN

SUBJECT: A. CLARIFICATION OF ALIEN BUSINESS DECREE (ABD)

B. ABD STATUS LIQUID CARBONIC AND PETROCHEMICAL COMPLEX

FOR PRICE OPIC FROM MIDDLETON

1. IN MEETING APRIL 5 WITH CHAI NIDHIPRABHA, DIRECTOR GENERAL
OF THE COMMERCIAL REGISTRATION DEPT (CRD)
(AGENCY IMPLEMENTING ABD) AND HIS DEPUTY PRAYOON
TALERNGSRI FOLLOWING CLARIFICATIONS WERE MADE:

A. THE PURPOSE OF ABD IS TO ENCOURAGE THAIS TO
DEVELOP COMMERCIAL SKILLS BY LIMITING FOREIGN COMPETITION
IN LESS SOPHISTICATED ENTERPRISES.

B. CLARIFICATIONS WILL EVENTUALLY BE ISSUED BY
CRD TO DEFINE WITH GREATER PRECISION TYPES OF BUSINESS SUBJECT TO
ABD AND IN NEAR FUTURE BY MFA TO DEFINE WHAT
AN AMERICAN COMPANY IS.

C. ANY COMPANY MAY REQUEST RULING ON WHETHER IT
COMES UNDER ABD BY SENDING CRD A LETTER DESCRIBING ITS
BUSINESS ACTIVITY.

D. A COMPANY OTHERWISE UNDER ABD WILL BE TOTALLY EXEMPT FROM ABD
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BY RECEIVING A PROMOTION CERTIFICATE
FROM BOARD OF INVESTMENT.

E. CRD MAINTAINS POSITION ABD MUST BE ENFORCED AS IS
WITHOUT REGARD TO FOREIGN TREATIES ALL FIRMS WHICH
REGISTER, US OR OTHER MUST COMPLY AND ARE SUBJECT TO ALL
RESTRICITIONS BUT IN CASE OF US FIRMS LIBERALATTITUDE WILL BE TAKEN
IN IMPLEMENTING THE REGULATIONS ONLY WAY
IN WHICH FOREIGN FIRMS MAY AVOID RESTRICITIONS OF ABD, IF
THEIR GOVERNMENT HAS VALID TREAT SUCH AS AER IS FOR
THEM NOT REPEAT NOT TO REGISTER UNDER ABD. CRD WILL
ACCEPT DECISION OF MFA ON WHETHER AER TREAT WITH US DOES PROTECT
FIRMS

IN VARIOUS CATEGORIES OF ABD.

F. ALL REPEAT ALL US COMPANIES WHICH FILED
APPLICATION FOR REGISTRATION PRIOR TO FEB 24 1973 DEAD-
LINE WILL BE REGISTERED IF CRD DETERMINES THEY COME
UNDER ABD.

G. NO REGISTRATIONS WILL BE ISSUED FOR COMPANIES
DOING BUSINESS IN THAILAND BEFORE THE DEADLINE WHO FILED
APPLICATIONS AFTER THE DEADLINE.

H. WHETHER UNREGISTERED AMERICAN FIRMS DOING BUSINESS
BEFORE AER TERMINATION MAY REGISTER AFTERWARD WILL
DEPEND ON RTG POLICY AT THAT TIME.

1. APPLICATIONS TO START NEW BUSINESSES WILL NOT BE
APPROVED IF THE BUSINESSES COME UNDER ANNEX A OR B OF
ABD, BUT WILL BE REGISTERED
IF UNDER ANNEX C OF ABD.

J. HOWEVER IF THE MFA INFORMS CRD THAT TREATY AER PROVIDES SUCH
PROTECTION AMERICAN FIRMS MAY START NEW BUSINESSES UNDER
ANNEX A OR B. THEY WILL REGISTER UNDER CIVIL AND COMMERCIAL
CODE TO DO BUSINESS, AS ALL FIRMS WHETHER THAI OR FOREIGN
MUST BUT NOT UNDER ABD.

K. AMERICANS WHO REGISTERED UNDER ANNEX A MUST GO OUT
OF BUSINESS OR BE ONLY 49 PER CENT FOREIGN OWNED IN TWO YEARS.
ANOTHER POSSIBILITY APPEARS TO BE THEIR WITHDRAWAL OF
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APPLICATION ONCE MFA REAFFIRMS APPLICABILITY OF AER
AND CONTINUE IN BUSINESS AS AMERICAN FIRM UNTIL TERMINATION
OF AER.

L. REGULATIONS UNDER CLAUSE 8 OF ABD WILL BE ISSUED
SOON. THESE REGULATIONS WILL NOT APPLY TO COMPANIES
WHICH WERE IN BUSINESS PRIOR TO PROMULGATION OF THESE
REGULATIONS.
THEY WILL NOT BE APPLIED RETROACTIVELY BUT ONLY IF AT ALL TO NEW
COMPANIES AT TIME OF REGISTRATION ANY FUTURE
CHANGES IN CLAUSE 8 REGULATIONS WOULD NOT BE APPLIED RETROACTIVELY.

M. RETAILING UNDER ABD COMPREHENDS THE SALE OF ANY
GOOD TO A FINAL USER THEREOF THUS THE SALE OF A
LATHE TO A MACHINE SHOP IS A RETAIL SALE. HOWEVER NO
SALE BY A MANUFACTURER IS CONSIDERED A RETAIL SALE EVEN
THOUGH THE BUYER IS THE FINAL USER THEREOF.

N. MOST MANUFACTURING DOES NOT COME UNDER ABD.
INCLUDING OIL REFINERIES AND METAL SMELTERS.

2. LIQUID CARBONIC ABD STATUS DOES NOT REPEAT NOT APPEAR REPRESENT
PROBLEM SITUATION COMPLICATED AND COVERED
BY LETTER IN MAIL MARSDEN TO MCGRATH. REF CABLE STATE 047674.

3. PETROCHEMICAL COMPLEX DESCRIBED BANGKOK A71 MARCH 16
HAS PROMOTION CERTIFICATE AND THEREFORE NOT AFFECTED
BY ABD.

4. EMBASSY COMMENT: SOME OF ABOVE INFORMATION HAS
BEEN SENT WASHINGTON PREVIOUSLY BUT EMBASSY FELT MESSAGE
SHOULD BE SENT AS IS CONTAINING POINTS CONSIDERED MOST
IMPORTANT BY MIDDLETON.
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